



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CCB/143610

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 31, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Milwaukee Enrollment Services in regard to Child Care, a hearing was held on October 02, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's child care benefits effective August 1, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Alma Lezama  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 15, 2012, the Petitioner married her husband CD. They have one child together. CD was the casehead of a separate assistance group composed of himself and another minor son.

3. On July 16, 2012, the Petitioner submitted a renewal application for child care benefits. She reported that she had married CD and she reported a household size of four including her, CD and two minor children. She reported an address of 5723 N. 90<sup>th</sup> St., Milwaukee, WI. The agency added CD to the Petitioner's household and closed CD's separate case.
4. On July 17, 2012, the agency issued a Notice of Eligibility Child Care notifying the Petitioner that her child care benefits would end July 31, 2012 due to CD not being in a W-2 approved activity.
5. On August 31, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Parents are eligible for child care services if they need the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0.

The Petitioner disputes the agency including CD in her assistance group for purposes of determining her eligibility for child care. She testified at the hearing that CD does not live with her. There is no dispute that CD was not engaged in a W-2 activity during the relevant time period.

Regarding the issue of including CD in the Petitioner's assistance group for purposes of determining eligibility for child care benefits, the evidence is overwhelming that the agency properly included CD. In her July 16, 2012 application, the Petitioner listed CD as a member of the household. CD listed his address as that of the Petitioner's address with the UC agency in February, 2012. In a separate appeal filed by CD regarding the closure of his FS group, the hearing examiner found the evidence to establish that CD and the Petitioner reside together and the agency properly discontinued CD's FS case when the Petitioner listed him as a member of her household. The Petitioner and CD asserted at this hearing that he does not reside with her despite Petitioner reporting him in July, 2012 as a member of the household. The only evidence produced at this hearing to support the Petitioner and CD's assertions that he does not reside with her is a copy of a rental agreement signed July 29, 2011 listing CD as a tenant at another residence. This is insufficient to establish CD's residence in July, 2012 and thereafter especially given the conflicting evidence of the address on file at the UC agency and Petitioner's application showing that CD resides with the Petitioner.

Based on the evidence, I conclude that the agency properly included CD in the Petitioner's assistance group and the agency properly terminated the Petitioner's child care benefits effective August 1, 2012.

### **CONCLUSIONS OF LAW**

The agency properly terminated the Petitioner's eligibility for child care benefits effective August 1, 2012.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

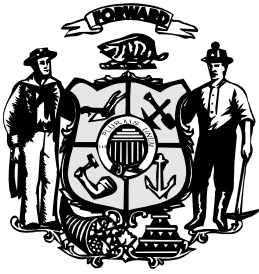
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of December, 2012

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 17, 2012.

Milwaukee Enrollment Services  
Child Care Benefits